

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.1254 OF 2006

JUDGMENT:

Dissatisfied with the award of Rs.25,000/- towards compensation, as against the claim for Rs.2,00,000/-, laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 read with Rule 455 of the A.P. Motor Vehicles Rules, 1989, seeking enhancement of the same, claimant preferred this Civil Miscellaneous Appeal against the order and decree, dated 12-04-2006, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge (Fast Track Court), Nizamabad, in O.P. No.1323 of 2001.

2. The appellant herein is the claimant, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the Jeep bearing No.AP-25-D-7677 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 14-06-2001, the

claimant and others boarded the Jeep bearing No.AP-25-D-7677 to proceed to Basar, and, while coming back (return journey), in the same vehicle, when reached near Yemcha Hillock, at about 8-30 p.m., since driver of the Jeep drove it at high speed and in a rash and negligent manner, it dashed against a culvert, due to which, claimant and other inmates of the Jeep sustained grievous injuries. Immediately, the claimant was shifted to Government Head Quarters Hospital, Nizamabad for treatment and from there he was shifted to a private hospital for further treatment. He incurred an expenditure of Rs.50,000/- towards treatment. He was doing business and earning Rs.10,000/- per month. He became totally unfit to do business, and, therefore, he sustained a total loss of Rs.10,11,500/- under various heads, but claims that he was restricting his claim to Rs.2,00,000/-. He made owner and insurer of the Jeep as respondent Nos.1 and 2, respectively, and sought compensation against them jointly and severally.

5. Respondent No.1, owner of the Jeep that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the Jeep, opposed the claim by taking various pleas.

7. The Tribunal framed three issues in the direction

of fixing responsibility for the accident. During enquiry, the claimant examined himself as PW.1 and also examined Dr. L. Ramulu as PW.2 and marked Exs.A-1 to A-6. On behalf of the respondents, no witnesses were examined and no documents were marked.

8. The Tribunal, having assessed the evidence on record, held issue No.1 in favour of the claimant. On issue No.2, the Tribunal disbelieving the evidence of PW.2 and excluding Ex.A-5, disability certificate issued by PW.2, by taking support of the judgment of this Court in **Dasi Narsimlu @ Narsaiah v. Sri Venkateshwar Rai and another** (C.M.A. No.3518 of 2004, dated 09-11-2004), to the effect that PW.2 has been issuing such disability certificates, and thereby, granted Rs.25,000/- in *lump sum* towards fracture of both bones of left leg with interest at 7.5% per annum.

9. It is the abovementioned order, which is challenged in the instant appeal by the claimant raising the grounds that the Tribunal has not properly appreciated the evidence on record and that the Tribunal ought to have granted Rs.50,000/- towards each fracture, Rs.50,000/- towards pain and suffering, Rs.50,000/- towards medical expenses, Rs.10,000/- towards extra-nourishment, Rs.50,000/- towards loss of earnings, and, therefore, sought to grant the balance amount of

Rs.1,75,000/-.

10. Heard Sri M. Rajamalla Reddy, learned counsel for the claimant (appellant), and Sri G. Purushotham Rao, learned counsel for respondent No.2, insurance company.

11. It is mentioned in the cause list that the notice issued to respondent No.1, owner of the vehicle, is not yet returned.

12. So far as respondent No.1, owner of the Jeep, is concerned, as there was no contest on his behalf controverting the allegations levelled in the petition by filing a counter before the Tribunal, his absence would not make any difference, more particularly, when the appeal was numbered in the year 2006 itself.

13. Perused the order under challenge and the oral and documentary evidence let in by the claimant.

14. Having taken note of the contentions raised by both sides, since the evidence of PW.2 shows that he has issued Ex.A-5 in his personal capacity, that has been the admission made in his cross-examination, the Tribunal was right in discarding Ex.A-5, disability certificate, as such, the same does not warrant any interference.

In view of the same, even Ex.A-6 need not be looked into.

15. Ex.A-3 is certified copy of injury certificate and Exs.A-1 and A-2 are certified copies of F.I.R. and charge sheet respectively.

Ex.A-3 reflects that the claimant sustained fracture of both bones of left leg and fracture of right clavicle. He was stated to have treated in the Government Hospital as out-patient. The Tribunal has not ruled out the fracture injuries sustained by the claimant. When examined in the light of above circumstances, certainly, the amount awarded by the Tribunal in *lump sum* is on lower side. When Ex.A-2, certified copy of the charge sheet, would show that driver of the Jeep who is arraigned as accused was clutched for the offence punishable under Section 338 of I.P.C., the said fact further proves that the claimant sustained fractures, as recorded in Ex.A-3. However, admittedly, no medical bills are forthcoming. When the nature of injuries are kept in view, the first being fracture of both bones of left leg and the second fracture of right clavicle, the claimant is entitled to Rs.20,000/- for the first injury and Rs.15,000/- for the second injury. He is also entitled to Rs.10,000/- towards extra-nourishment and Rs.5,000/- towards transport charges and attendant charges.

Further, since the claimant became immobilised for a considerable period, towards loss of temporary earnings at Rs.2,000/- per month for five months, a sum of Rs.10,000/- is granted.

16. Thus, the claimant is entitled to a total compensation of Rs.60,000/- (Rupees sixty thousand only) as against Rs.25,000/- awarded by the Tribunal, and the same is accordingly awarded, with interest at 7.5% per annum from the date of petition till the date of realisation.

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 2, 2015.

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